

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

UNITED STATES OF AMERICA

V.

JOSHUA HEATH ZUNIGA

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CRIMINAL NO. 5:06-MJ-055

**MOTION FOR DISCOVERY AND
INSPECTION UNDER RULE 16(a)(1)(E) AND BRIEF**

The Defendant moves the Court pursuant to Rule 16(a)(1)(E) of the Federal Rules of Criminal Procedure and the Fifth and Sixth Amendments to the United States Constitution to order the government through its Assistant United States Attorney to disclose and produce, and to permit the Defendant to inspect, copy, photograph and/or photocopy each of the following items of evidence which through due diligence may become known to the government or its agents:

SUMMARY OF OPINION TESTIMONY

The defendant moves the Court to order the government to prepare and produce, prior to trial, a summary of opinion testimony which the government intends to introduce through any witness testifying as an expert under Rules 702, 703, or 705 of the Federal Rules of Evidence.

Such summary must describe the witnesses' opinions, the bases and the reasons therefor, and the witnesses' qualifications.

Rule 16 of the Rules of Criminal Procedure was amended effective December 1, 1993 with the addition of section (a)(1)(E).

Unlike Rule 16(a)(1)(D), this new provision is not limited to scientific experts or to reports which are in existence at the time of the defense request. Rule 16(a)(1)(E) applies to any expert,

including law enforcement agents/witnesses who may offer expert opinion on a wide variety of subjects, or to a summary witness testifying pursuant to Rule 1006, Federal Rules of Evidence, when such a witness also gives expert testimony.

The new rule requires that, on request, the attorney for the government must actually prepare a summary of the expert witness' testimony which the government intends to offer in its case in chief at trial, even though a written report does not exist at the time of the defense request.

CONCLUSION

All of the above items requested are within the exclusive control of the Federal government, or other agencies acting in conjunction with the Federal government, and since the defendant and defense counsel have no executive power, the materials requested herein are unavailable to the defendant.

WHEREFORE, the defendant prays that the Court order the Assistant United States Attorney to disclose and produce the above-mentioned evidence to the defendant's counsel for copying and inspection.

Dated: July 19, 2006.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 19, 2006, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

Steve Sucsy
Assistant U. S. Attorney
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401

/s/ MARK EIGLARSH

CERTIFICATE OF CONFERENCE

I certify that I conferred with Steve Sucsy, the Assistant U.S. Attorney assigned to this matter, regarding the filing of the foregoing and she does not oppose said motion to the extent the motion requests discovery allowed under Rule 16 and Brady.

/s/ MARK EIGLARSH
Attorney for Defendant